IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 865 OF 2006
IN
WRIT PETITION NO. 2908 OF 2003

Shramik Mahasangh] .. Appellant (Ori.Petitioner)

Versus

1. Shri S.N. Saudankar & 2 ors.] .. Respondents (Ori.Respondents)

Mr. Sanjay Singhvi with Ms. Jane Cox for the appellant.

Mr. J.P. Cama, senior counsel with Ms. S.V. Kher and Mr. Mahesh Londhe i/b M/s. Sanjay Udeshi & Co. for the respondent No.3.

CORAM: R.M. LODHA, &
S.A. BOBDE, JJ.

DATED: 04TH DECEMBER, 2006

P.C. :

. We heard Mr. Sanjay Singhvi, the counsel for the appellant and Mr. J.P. Cama, the senior counsel for the respondent No.3.

2. In paragraph 16 of the Award, the Industrial Tribunal held thus:

> "16. On perusing the handbook on Personnel Policies page 22 Ex-19 shows canteen facilities are provided at Mumbai, Delhi and Calcutta, nowhere finds that canteen is part of service condition of staff of UTI. It is

seen workmen of the Trust in the year 1985 has raised the demand of establishment of canteen in the charter of demands, however, it was dropped when the settlement was signed in 1986 and when raised again in the subsequent charter in 1989 was also dropped in the year 1990. It is further seen from the record, some canteen which were already established were later on discontinued. In some places only canteen are running. Had canteen part and parcel of service condition, Union of employees of the trust would not have dropped the demand as above, and that Trust had no option, to close canteen at some places, which shows, Trust set up its canteens whenever it desires and run it a long as it desired and discontinue it whenever it desire and thereby canteen has not become a condition of service. Trust it is, wherever there is no canteen, subsidy is given by the Trust to its employees. However, at the same time, it has come on record that it is not obligatory on the employees of the Trust, to purchase the canteen eatables. It is seen even in the Mumbai canteen facilities are not provided at Ghatkopar, Borivli, Thane etc. That means, canteen is a welfare measure and that there is no statutory obligation on the Trust to set up canteen. Under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of employees, in that case, canteen becomes a part of the establishment and in that case workers employed in such canteen are the employees of the management. Obligations to provide canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation does not become a part of management. The obligation to provide canteen may be explicit or implicit where the obligation is not explicitly accepted or cast upon the employer, either by an agreement or award etc., it may be inferred from the circumstances whether a particular facility or service has become implicitly a part of service condition of employee or not will become on the service/facility, the contribution of the service in question,

> whether the service continuously available or not, interest taken by employee in maintaining, controlling and supervising the service. On considering the evidence as a whole, in the context of the admissions given by the Union representative, it can hardly can be said that canteen facility is the service condition of trust employees and that there is a statutory obligation on the said employer to provide said facility."

3. The learned single Judge did not find any error in the consideration of the matter by the Industrial Tribunal. We have no justifiable reason to take different view. Rather, the consideration of the matter by the Industrial Tribunal is in accord with the judgment of the Supreme Court in the case of **Employers in Relation to the Management of Reserve Bank of India vs. Their Workmen, AIR 1996 SC 1241** and another judgment in the case of **State Bank of India Vs. State Bank of India Canteen Employees Union (Bengal Circle) AIR 2000 SC 1518**.

4. The Appeal does not deserve to be admitted and is dismissed in limine.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]